



CALIFORNIA DEMOCRATIC PARTY

SENATOR ART TORRES (Ret.), Chairman

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COMMISSION
OFFICE OF CLERICAL
SUPPORT

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March 18, 1997

Federal Election Commission
999 E Street, N.W.
Washington, C.C. 20463

Dear Commissioners:

The California Democratic Party files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), 2 U.S.C. §§ 431 et seq., and related regulations of the Federal Election Commission ("FEC"), 11 C.R.F. §§ 101.1 et seq., by Robert Dornan and various radio broadcast stations around the country (referred to collectively hereafter as "Respondents").

Respondents have violated the Act by making and accepting illegal corporate contributions in violation of 2 U.S.C. § 441b. The FEC must act immediately to investigate this complaint. There is every reason to believe that this violation is a continuing one and that without prompt action by the Commission, the damage from this illegal activity will be done and no truly effective remedy will be available.

The Facts

Bob Dornan is a candidate for election in the 1998 Congressional race in the 46th Congressional District of California. Press reports quoting Mr. Dornan have made it clear he is running and that he views his opponent in that race the current Congresswoman from the district, Loretta Sanchez.

- February 13 Orange County Register headline: "Dornan to run for House Again." "I started making calls this morning to set up the new campaign team and the new structure...I'm going back to Congress. I feel it in my bones."
- Time Magazine: Letter to the editor signed "Robert K. Dornan, The Once and Future congressman."
- February 17 Roll Call headline: "Dornan vows rematch with Sanchez next year."
- In an appearance on a talk show on March 10, he referred to Congresswoman Sanchez as "my opponent."
- March 18, 1997 Orange County Register headline: "Dornan's growing fund eyed by feds." "Dornan said he is stockpiling money for a special election."



During the week of March 10, Mr. Dornan appeared as the "guest host" on the Ollie North radio show for three hours each day talking about his candidacy and attacking Congresswoman Sanchez. Press reports also indicate that he will be a guest host in the near future on the Michael Reagan radio show. His appearance on these shows is quite simply an opportunity nationally syndicated for a 3-hour unedited campaign appearance for Mr. Dornan paid for by the radio stations running the programs.

The Law

The Act and commission regulations define the terms "contribution" and "expenditure" to include any gift of money or anything of value made by any person for the purpose of influencing any election to federal office. 2 U.S.C §§ 431(8)(A)(I), 431(9)(A)(i); 11 C.F.R. §§ 100.7(a)(1). The same definition applies to contributions(i) by corporations. 2 U.S.C. § 441b(b)(2); 11 C.F.R § 114.1(a)(1). The term "person" includes a corporation. 2 U.S.C. § 431 (11). The Act and the regulations prohibit any contribution by a corporation in connection with any federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b).

The Act specifically exempts from the definition of expenditure "any new story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate." 2 U.S.C. 431 (9)(B)(I). FEC regulations track the statute and provide for an exemption for "cost{s} incurred in covering or carrying a news story, commentary or editorial by any broadcasting stations... ." 11 C.F.R. § § 100.7(b)(2) and 100.8 (b)(2).

Discussion

This exemption of press activity from the definitions of contribution and expenditure was designed to protect the press's First Amendment rights to report or to editorialize on news events involving candidates or committees involved in federal elections. It was intended to allow the press to provide information to the public to help educate them on issues of concern in the electoral process.

It is clear from the facts described above, that Mr. Dornan's appearance on the shows in question does not meet these criteria and does not, therefore, constitute an appearance subject to the news story exemption. This is not simply an appearance of a candidate on an interview program, during which the news entity has an opportunity to ask questions and control the dialogue. Nor does it qualify as an "editorial" by the station. Rather, in this case, the station has simply turned three hours of free air time each day over to Mr. Dornan, as a "guest host" to discuss his candidacy. There apparently has been no effort to provide him with a format or a subject to cover or with guests to question, as might be expected of other guest hosts or on the regular programming.

March 18, 1997

Page 3

The value of such time is enormous. The purchase of airtime is one of the major expenses in any campaign. Here, Mr. Dornan gets unrestricted air time to discuss his candidacy and to attack his opponent. This appears to be a completely partisan effort, with no attempt on the part of the stations to make a balanced presentation of the issues by providing a similar opportunity for Congresswoman Sanchez.

Mr. Dornan may attempt to argue that his appearance on these shows is related to his election contest against Congresswoman Sanchez and that it is not, therefore, a contribution to his 1998 election campaign. This argument is unavailing. First, corporate contributions may not in any event be accepted in connection with an election contest. More importantly, the content of the programs make clear that this is not his purpose. Mr. Dornan repeatedly described his appearance a "national radio press conference" about his race against Congresswoman Sanchez. The purpose of his appearance was to attack Mrs. Sanchez on campaign contributions and other activities related to the 1996 campaign, contest and to promote his own candidacy for 1998.

Conclusion

The provision of free air time to Mr. Dornan is a prohibited corporate contribution by each station that airs his "guest host" appearances. These appearances are not covered by the news story exemption under the FECA and the Commission's regulations. Each appearance is merely a subsidy to Mr. Dornan's 1998 election campaign.

Since it is clear that Mr. Dornan and the stations involved intended to continue providing him with free air time to discuss his campaign, we ask that the Commission act quickly to put a stop to this ongoing violation.

Sincerely,



SENATOR ART TORRES (RET.)
Chairman